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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/590,488
Filing Date: June 09, 2000
Appellant(s): JERDING ET AL.

Ms. Karen G. Hazzah
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 30 July 2007 appealing from the Office action mailed 27 February 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,666,293	METZ	9-1997
6,166,730	GOODE et al.	12-2000
5,721,829	DUNN et al.	2-1998
6,609,253	SWIX et al.	8-2003
5,969,748	CASEMENT et al.	10-1999

Gordon et al., US Provisional Application No. 60/034,490, filed 13 January 1997.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 74-79 and 89-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz et al. (US Pat No. 5,666,293), in view of Goode et al. (US Pat No. 6,166,730), in view of Dunn et al. (US Pat No. 5,721,829), and in further view of Swix (US Pat No. 6,609,253).

In consideration of claims 74 and 89, the Metz et al. reference discloses a method implemented via a "digital home communication terminal (DHCT)" [100] comprising "memory" [120/115] and "programming code stored in said memory" (Col 20, Lines 12-59). "Responsive to [the DHCT] . . . experiencing a reboot condition" (Col 23, Lines 20-22; Col 23, Lines 62-65; Col 36, Lines 37-41), the DHCT [100] is operable to provide

and support video-on-demand services (Col 24, Lines 10-17). The reference, however, is silent with respect to further processing of VOD rentals as claimed.

In an analogous art pertaining to video-on-demand systems, the Goode et al. reference discloses a video-on-demand system in which the user can rent multiple video presentations and control the playback of these video programs through playback commands (ex. play, stop, pause, etc.) (Col 2, Line 64 - Col 3, Line 5). In accordance with the provision of these services, the video session manager [106] allocates and manages bandwidth associated the provision of these programs (Col 3, Lines 17-63) as well as tracking those presentations which are still currently available for further viewing subsequent to the user stopping the presentation (Figure 11). The Goode et al. reference similarly discloses a method implemented by a "digital home communication terminal (DHCT)" [118] comprising "memory" [518/520] implicitly storing "program code" so as to control the operation of the terminal via an interactive interface such as the OnSet™ system (Col 13, Line 60 - Col 14, Line 10). Illustrative screens associated with the OnSet™ navigator are provided in the co- pending 60/034,490 application explicitly incorporated by reference (Col 13, Line 60 - Col 14, Line 10). For example, Figure 17 of the '490 application illustrates the described 'active program list' corresponding to "VOD rentals [that have been] purchased and have not expired".

The claim is met as follows. A user orders a given presentation, proceeds to watch that presentation (Figure 7, Col 14, Line 55 - Col 15, Line 42) and stops/pauses the presentation (Figure 8; Col 15, Line 43 - Col 16, Line 25). Upon desiring to return to the presentation, the system "determines if at least one VOD rental has been purchased and

has not expired" (Figure 11; Col 17 Line 55 - Col 18, Line 33) and from that list allows the viewer to choose to restart the presentation (Figure 12; Col 18, Lines 34-65). Assuming that the pause/stop was for a long duration, the session manager [106] will deactivate the session associated with the video presentation in order to reallocate bandwidth to other subscribers (Col 12, Lines 12-37). Accordingly, "responsive to determining that the at least VOD rental has been purchased and has not expired and responsive to determining that the previously established VOD session of the first VOD presentation is no longer active" since it has been terminated due to inactivity, the system necessarily "establishes another active VOD session of the first VOD presentation" as necessary in order to restart delivery the requested presentation and may further "provides the VOD current rental screen" responsive to further 'bookmarking'. In association with the continued playback, should the user pause the presentation for a short period, resume playback, and subsequently pause/stop, the system "responsive to determining that the previously established VOD session for the first presentation is still active" given that it doesn't require the reestablishment of the session, "provides a VOD current rental screen that includes a selectable option to view the first VOD presentation, the VOD current rental screen having a VOD title of the first presentation . . . and information on the rental time duration remaining for viewing the VOD title" (Col 15, Lines 42 - Col 16, Line 26; Col 17, Line 55 - Col 18, Line 33). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Metz et al. such that "responsive to a home digital home communication (DHCT) experiencing a reboot condition" to perform to associated steps of Goode et al.

for the purpose of providing a cost effective means for distributing video-on-demand and other information services in a manner which allows for the contemporaneous viewing/sharing of a requested movie (Goode et al.: Col 1, Line 66 – Col 2, Line 22). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goode et al. so as to perform its particular operations "responsive to a digital home communication terminal (DHCT) experiencing a reboot condition" for the purpose of desirably providing a means to periodically update the operating system software of the operating terminals (Metz et al.: Col 4, Lines 7-36).

The Goode et al. reference, however, is silent with respect to the aforementioned "current rental screen" further comprising "information on the length of time remaining on the VOD titles, and information on the rental time duration remaining for viewing the VOD title". In an analogous art pertaining to interactive video distribution systems, the Swix et al. reference discloses an advantageous technique for managing bandwidth in conjunction with a VOD system which includes tearing down sessions associated with extended inactivity (Col 8, Lines 16-36) and more specifically includes providing any number of graphical displays comprising "information on the length of time remaining on [a] VOD title" and "information on the rental time duration remaining for viewing the VOD title" (Swix et al.: Col 14, Lines 21-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Goode et al. such that the aforementioned "current rental screen" further comprises "information on the length of time remaining on the VOD title" and "information on the rental time duration remaining for viewing the VOD title" for the purpose of

advantageously providing a means so as to limit a subscriber's ability to consume bandwidth capacity yet provides a satisfactory viewing experience that informs the user as to the status of established viewing limits (Swix et al.: Col 5, Line 59 - Col 6, Line 30).

The Goode et al. reference is also silent as to what occurs "responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired". In an analogous art pertaining to interactive video distribution systems, the Dunn et al. reference discloses a VOD system that "determines if at least one video-on demand (VOD) rental has been purchased and has not expired" and "responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired" it "provides a list of selectable VOD titles" (Col 7, Lines 20-34) for subsequent purchase. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the Dunn et al. interface navigation so as to "provide a list of selectable VOD titles responsive to determining that at least one VOD rental does has not been purchased or that previously purchased VOD rentals have expired" for the purpose of providing the user with a convenient means to facilitate the viewer's browsing and ordering of video content if there are no current rentals and other inherent advantages associated therewith.

Claims 75 and 90 are rejected wherein the system "receives a user input configured to select the selectable option to view the first VOD presentation" [1205] whereupon the system "provides the first VOD presentation to a user" [1215] (Goode et al.: Figure 12).

In consideration of claims 76 and 91, the Goode et al. reference discloses teaches that upstream communication signals derived from the "digital home communication terminal (DHCT)" [118] control the particular playback operations associated with the SCM for controlling the distribution of the media presentation (Col 13, Lines 54-64). The reference also teaches that the terminals may need to "retry . . . at various time intervals" based upon a random back-off interval should the particular distribution of these commands fail (Col 9, Lines 20-67). Accordingly, the claim meets the claim limitation "wherein if establishing another active VOD session fails, retrying to establish another active VOD session for the first VOD presentation at various time intervals" such should the "digital home communication terminal (DHCT)" [118] fail in attempting to setup an active session with the SCM (ex. transmission failure of command due to message collisions), the "digital home communication terminal (DHCT)" [118] will subsequently retry at various time intervals.

In consideration of claims 77 and 92, as aforementioned, the Goode et al. reference "determines whether multiple current rentals exist" (Figure 11) and is capable of "setting up a session" in association with the playback of previously viewed current rentals on any order designated by the user (Col 18, Lines 21-33). Accordingly, the reference anticipates the particular intended use such that the system "sets up a session a most recently viewed current rental" in response to the user designation of restarting viewed programs in the order of viewing.

Claims 78 and 79 are rejected wherein the apparatus is operable to "receive a first user input configured to select a VOD title from the list of selectable VOD titles", to

"provide a selectable option for renting a second VOD presentation corresponding to the VOD title selected from the list of selectable titles", and to "receive a second user input configured to select the selectable option for renting the second VOD presentation" (Goode et al.: Col 4, Line 55 - Col 5, Line 9; Col 14, Line 63 - Col 15, Line 33).

2. Claims 80-88, 94, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz et al. (US Pat No. 5,666,293), in view of Goode et al. (US Pat No. 6,166,730), in view of Dunn et al. (US Pat No. 5,721,829), in view of Swix (US Pat No. 6,609,253), and in further view of Casement et al. (US Pat No. 5,969,748).

In consideration of claim 80-84, the combined teachings do not particularly disclose nor preclude the usage of determining whether or not selected presentations are blocked via both parental control and purchase access codes. In an analogous art pertaining to video distribution systems, the Casement et al. reference provides a method for renting a VOD presentation wherein "responsive to receiving the second user input, determining whether the second VOD presentation is blocked", the apparatus "prompts a user to provide a third user input identifying a first access code for unblocking the presentation", and "receives the third user input identifying the first access code" [100/102]. Subsequently to "responsive to receiving the third user input identifying the first access code" [102], the user is "prompted . . . to provide a fourth user input identifying a second access code" [106]. Presuming that both the "first" and "second access codes" are correct, the apparatus "provides the user with the VOD presentation responsive to receiving the third user input" [110] (Casement et al.: Figure 3; Col 6, Lines 30-47). Accordingly, it would have been obvious to one having ordinary skill in the art at the

time, the invention was made to modify the combined teachings with that taught by Casement et al. for the purpose of advantageously providing a means to control access to television programs associated with both regular and on-demand programming (Casement et al.: Col 1, Lines 5-8, 26-63).

In consideration of claims 85 and 86, while Casement et al. discloses the particular usage of "key-strokes" in conjunction with the user input device (Col 3, Lines 51-65), the reference does not explicitly disclose that the entry of the "third and fourth user inputs" are provided via a plurality of key-strokes" such that the "first and second access codes each include a plurality of characters". Rather, the reference simply discloses that the passwords are entered, but does not particularly disclose how they are entered or their length. Figure 14 of the incorporated Gordon et al. (60/034,490) reference teaches the usage of a "plurality of key-strokes" in association with a password. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the aforementioned user input device so as to enter the multi-character passwords using a "plurality of key-strokes" for the purpose of providing a means or technique by which to facilitate the entry of the "third and fourth user inputs".

Claim 86 is rejected wherein the "first and second access codes each includes a plurality of characters" (Casement et al.: Col 7, Lines 38-40).

Claim 87 is rejected wherein the "first user input enables the VOD presentation to be unblocked" (Casement et al.: Figure 4; Col 6, Line 48 - Col 7, Line 20).

Claim 88 is rejected wherein the "second user input enables the VOD presentation enables the VOD presentation to be rented" (Casement et al.: Figure 5; Col 7, Lines 21-31).

Claim 93 is rejected wherein the "program code is further configured to provide a second VOD presentation identified in the list of selectable VOD titles responsive to receiving a first user input selecting the second VOD presentation" (Goode et al.: Col 4, Line 55 - Col 5, Line 9; Col 14, Line 63 - Col 15, Line 33), a "second user input identifying a first access code, and a third user input identifying a second access code" (Casement et al.: Figure 3; Col 6, Lines 30-47).

Claim 94 is rejected wherein the "first user input enables the VOD presentation to be unblocked" (Casement et al.: Figure 4; Col 6, Line 48 - Col 7, Line 20). Claim 95 is rejected wherein the "second user input enables the VOD presentation enables the VOD presentation to be rented" (Casement et al.: Figure 5; Col 7, Lines 21-31).

(10) Response to Argument

The examiner respectfully disagrees that the rejection be reversed. The Examiner's Answer only addresses arguments for patentability made by appellant. Any further arguments regarding other elements or limitations not specifically argued that the appellant could have made are not being addressed further for consideration by the panel. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it

is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.[1]

A. Rejection of Claims 74-79 and 89-92 under 35 U.S.C. 103

Appellants contend that the rejection is in error because claim 74 contains several actions ("determining", "providing", and "establishing") that are "responsive to" certain conditions which define a particular process flow. However, the claims do not require the degree to which the actions are in fact 'responsive to' the conditions (i.e. directly responsive to versus indirectly responsive to). The instant application also provides no special definition regarding the meaning of the phrase 'responsive to'.[2] Appellants, argue that a step "responsive to" another must not only occur later in time (sequentially), but must also be performed as a result of the first step being performed even if intervening steps are possible due to the open ended language of the claim.[3] Appellants have not previously proposed this two-pronged definition nor has any evidentiary support for this definition been presented throughout prosecution. The definition, in light of the claims, is not consistent with the specification given that the specification discloses that the steps/functions of the process flow may occur out of the illustrated order (IA: Page 66, Lines 3-8). Per appellant's own specification, the steps can equivalently be

[1] See 37 CFR 41.50(a)(1) and MPEP 1211.
[2] See MPEP 2111.01
[3] It is noted for the Panel that if a 'reboot condition' was not determined to occur, the scope of claim 74 would simply be a method comprising a number of unspecified further steps and claim 89 a terminal with memory and program code. The examiner subsequently construed the independent claims 'positively' such that the claims required the existence of a 'reboot condition'. If it is the Panel's opinion that the claim interpretation does not require a 'positive' interpretation, it is respectfully requested that the Panel make note of this in its decision for further action by the examiner.

performed in any order and are not required to be performed in a particular order. They are not 'responsive to' one another in accordance with appellant's definition since they do not need to be performed as a result of one another. For the sake of argument, let us assume that a particular event (event A) may occur, be followed by another event (event B), and be further followed by another event (event C). The specification would suggest that the steps could be equally performed as C-B-A or A-B-C. If 'responsive to' requires that the steps must be performed as a result of the previous step being performed, the fact that the order of the steps does not matter casts doubt on the steps being necessarily dependent on any of the other steps being performed in order such that they are necessarily 'responsive to' one another. Therefore, in light of the process flow of Figures 5A, 5B, and 6, being 'responsive to' appears to be more reasonably construed merely as an ordered operation of process steps wherein certain steps are performed indirectly following or in return to the condition having occurred. The examiner respectfully submits that the rejection of record provides a scenario in which the particular steps are being performed "responsive to" one another.

1. Claim 74

a. The combination of references teach the step of "responsive to a [DHCT] experiencing a reboot condition, determining if at least one [VOD] rental has been purchased and not expired".

The rejection of record is based on a combination of references and one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references.[4] Appellant argues that the teachings of Metz et al. are limited to rebooting a device and that Goode, for the sake of argument, teaches 'determining if at least one [VOD] rental has been purchased and not expired'. However, appellants argue that simply because the terminal 'may require' the repair of a terminal that would result in a reboot that this does not suggest that the operation is performed "responsive to . . . experiencing a reboot condition". The examiner respectfully disagrees.

Metz et al. discloses that it is known in the art for a set-top terminal to detect failures associated with self- diagnostics and perform upgrade processing for software application which control functions including video-on-demand (VOD)(Col 24, Lines 10-17; Col 34, Lines 23-30). In conjunction with upgrading or reloading the operating system and associated software applications, the set-top terminal requires a 'reboot'. It does not perform any further operation until it has successfully 'rebooted' (Col 23, Lines 4-23). Consequently, Metz et al. does in fact teach a scenario whereby "responsive to a digital home communication terminal (DHCT) experiencing a reboot condition" the terminal resumes its normal operations, which include the provision of VOD services/applications. The examiner concluded that Metz et al. is simply silent with respect to what the particular operation of VOD services entails once the terminal does in fact continues its operations 'responsive to . . . experiencing a reboot condition'.

Goode et al. teaches that "determining if at least one [VOD] rental has been purchased and not expired" is a known technique/operation for VOD systems (Figure 11;

[4] See In re Keller, 642 F.2d 413,208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375

Col 17, Line 55 - Col 18, Line 33). This technique was recognized as part of the ordinary capabilities of one skilled in the art so as to allow a viewer to watch a remainder/entirety VOD presentation that has been purchased. The examiner subsequently concluded that one having ordinary skill in the art would have subsequently found it obvious to provide this predictable functionality as part of the VOD software application of Metz.

As previously noted, the open ended nature of the claims does not require that immediately after rebooting that the 'determining' step be performed. An inoperative terminal cannot perform the 'determining' step without being first repaired. Any further operation of a terminal that became inoperative is necessarily 'responsive to' the terminal experiencing a reboot condition. Therefore, the examiner concluded that the combination of references (i.e. a Metz rebooting terminal that continues to offer VOD functionality after rebooting) having been modified to provide a particularly known VOD function after having been reboot (i.e. the VOD functionality of Goode) teaches the claimed limitation. Accordingly, it is the examiner's opinion that the claimed step is met.

b. The combination of references teach the step of "responsive to determining that at least one VOD rental has been purchased and has not expired, determining whether a previously established VOD session for a first VOD presentation is still active".

Appellant argues that the Goode et al. reference teaches that the Goode et al. makes no mention of determining whether a previously established session or individual presentation of the VOD rental is still active. The examiner respectfully disagrees.

(Fed. Cir. 1986).

It is well established express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103.[5] Once a reference appears to be substantially identical is made the basis of a rejection, and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. Appellant's arguments only address the first part of the claim relating to determining that VOD rentals have been purchased and have not expired (Figure 17 of the Goode et al. ('490) application). Appellants do not address the reasoning presented in the rejection regarding how the step of determining whether a previously established VOD session is still active; as opposed to simply concluding that the step is not mentioned in the specification. Accordingly, appellant has not met their burden.

As noted and reasoned in the Final rejection, the examiner has concluded that even though no explicit mention is made of the process of 'determining' that this step is necessarily being performed. In particular, the Goode et al. reference teaches that its VOD system operates such that subscribers are allocated bandwidth/channels by the session control manager [220] (Col 7, Line 62 – Col 8, Line 8) when requesting a program. This allocated bandwidth is used when the subscriber watches the program (Col 12, Lines 3-26) and is de-allocated or not active when either the session ends or the session is paused /stopped (terminated) for a long duration (Col 12, Lines 12-37). This is similar to the process performed in the instant application (IA: page 59, Lines 15-18).

[5] "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness." In re Napier, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

Since a subscriber requires bandwidth to view a program, the previously reallocated bandwidth is restored up resuming the session in order to resume viewing of the program. Accordingly, the system "determines whether a previously established VOD session for a first VOD session is still active" as part of the dynamic allocation of bandwidth/channels. Otherwise, if the user attempted to restart a presentation and the session had been deactivated the system would be attempting to resume delivery of the movie with no bandwidth resulting in the subscriber left scratching their heads as to why they're staring at a blank screen after hitting resume. The examiner subsequently concluded that a scenario existed within Goode et al. whereby the system "determines if at least one VOD rental has been purchased and has not expired" (Figure 12; Col 18, Lines 34-65) and that "responsive to" that determination and the user desiring to resume viewing the presentation that the system necessarily "determined whether a previously established VOD session for a first VOD session [was] still active" so as to activate the presentation.[6] Accordingly, it is the examiner's opinion that the claimed step is met.

c. The combination of references teach the step of "responsive to determining whether a previously established VOD session for a first VOD presentation is still active, providing a VOD current rental screen that includes a selectable option to view the first VOD presentation".

Appellant argues that the Goode et al. reference fails to teach the aforementioned limitation. The examiner respectfully disagrees.

[6] Figure 17 of Goode et al. ('490) illustrates the actual screen represented by element [1205] of Figure 12.

The nature of the claim requires a looping re-evaluation of process steps given that a VOD presentation, as set forth in the specification, cannot be both active and no longer active at the same time. For example, as illustrated in the process flow of Figure 5A of the application, decision point "194" allows for a VOD session to be either active or no longer active. The system does not allow for the session to be both active and no longer active simultaneously. Subsequently, the particular steps of being 'responsive to' in the instant application require the particular evaluation and reevaluation of the various steps throughout the operation of the system and are actually only 'responsive to' the first step of activating the mod client illustrated in element "191".

With this in mind, the examiner is not asserting that the session manager maintaining sessions is the same as the entire recited step. Rather, the rejection sets forth a scenario of a viewer having already paused/stopped and chosen to restart a presentation (ie. "determining that the previously established VOD session for the first VOD presentation is still active") choosing to return to the current rental screen (i.e. "providing a VOD current rental screen that includes a selectable option to view the first VOD presentation"). As previously set forth, being 'responsive to' appears to be more reasonably construed merely as an ordered operation of process steps wherein certain steps are performed indirectly following or in return to the condition having occurred. Accordingly, it is the examiner's opinion that the claimed step is met.

2. Claim 89

a. The combination of references teach the step of "determining if at least one video-on-demand (VOD) rental and been purchased and has not expired when the DHCT experiences a reboot".

Similar to the arguments presented in relationship to claim 74, appellant argues that Metz et al. is limited to simply teaching the rebooting of a device to run a new operating system and therefore does not teach "determin[ing] if at least one video-on-demand (VOD) rental has been purchased and has not expired". The examiner respectfully disagrees.

As previously discussed, the rejection of record is based on a combination of references and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Metz et al. discloses that it is known in the art for a set-top terminal that supports video-on-demand (VOD) to reboot should it become inoperative (Col 24, Lines 10-17; Col 34, Lines 23-30). "When" or after which (ex. We had just fallen asleep when the bell rang), Metz et al. continues to provide VOD functionality. Metz et al. is simply silent with respect to what the particular operation of VOD services. Goode et al. teaches that "determining if at least one [VOD] rental has been purchased and not expired" is a known technique/operation for VOD systems (Figure 11, Line 55 - Col 18, Line 33). This technique was recognized as part of the ordinary capabilities of one skilled in the art so as to allow a viewer to watch a remainder/entirety VOD presentation that has been purchased. The examiner subsequently concluded that one having ordinary skill in the art would have subsequently found it obvious to provide this predictable functionality as part of the VOD software

application of Metz. Accordingly, the examiner respectfully disagrees that the combination of references fails to teach or suggest the claimed limitation.

b. The combination of references teach the step of "responsive to determining that at least one VOD rental has been purchased and has not expired, the DHCT is enabled to determine whether a previously established VOD session for a first VOD presentation is still active".

Appellant argues that the Goode et al. reference fails to teach or suggest that the DHCT is enabled to determine if at least one video-on-demand (VOD) rental has been purchased and has not expired. The examiner respectfully disagrees.

The claim language requires that the program code resident on the DHCT enables to perform essentially perform the method steps of the previous independent claim. However, it was not construed as requiring that the DHCT program code itself is in fact performing the steps as opposed to merely being 'configured to enable the DHCT to' perform the steps in association with its interaction with the rest of the system. For example, the DHCT itself does not "establish another active VOD session for the first VOD presentation" as claimed. It merely initiates establishment of a session. Rather, session establishment is explicitly disclosed as being done by the DNCS [23] (IA: Page 9, Lines 1-6).

As set forth in the rejection of record, both the Metz et al. and Goode et al. DHCT comprise program code associated their respective processors to control the operation of

the terminal and its interaction with the remainder of the system (ex. Metz et al.: Col 20, Lines 12-59). As previously set forth, the claimed step of "responsive to determining that at least one VOD rental has been purchased and has not expired, determine[ing] whether a previously established VOD session for a first VOD presentation is still active" is believed met as previously disclosed. Accordingly, it is the examiner's opinion that the claimed step is met.

c. The combination of references teach the step of "responsive to determining whether a previously established VOD session for a first VOD presentation is still active, providing a VOD current rental screen that includes a selectable option to view the first VOD presentation".

Appellant argues that the Goode et al. reference fails to teach the aforementioned limitation. Appellant's arguments appear to be similarly based on the session control manager made earlier. Accordingly, the examiner respectfully disagrees for the reasoning previously set forth.

3. Dependent Claims 75-79 and 90-92

Appellant argues that since claims 74 and 89 are allowable for the reasons previously set forth that dependent claims 75-79 and 90-92 are likewise allowable for similar reasoning. As previously set forth, the rejections of claims 74 and 89 are believed proper. Therefore, absent any further arguments, the rejection of claims 75-79 and 90-92 are likewise believed proper.

B. Rejection of Claims 80-88 and 93-95 under 35 U.S.C. 103

Appellant argues that since claims 74 and 89 are allowable for the reasons previously set forth that dependent claims 80-88 and 93-95 are likewise allowable for similar reasoning. As previously set forth, the rejections of claims 74 and 89 are believed proper. Therefore, absent any further arguments, the rejection of claims 80-88 and 93-95 are likewise believed proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SEB

January 7, 2008

Conferees:

Scott Beliveau

Andrew Koenig

John Miller

B. Rejection of Claims 80-88 and 93-95 under 35 U.S.C. 103

Appellant argues that since claims 74 and 89 are allowable for the reasons previously set forth that dependent claims 80-88 and 93-95 are likewise allowable for similar reasoning. As previously set forth, the rejections of claims 74 and 89 are believed proper. Therefore, absent any further arguments, the rejection of claims 80-88 and 93-95 are likewise believed proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SEB

December 22, 2007

Conferees:

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